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9403
RECORDATION NO. Filed & Recorded

MAY 25 1978 - 2 20 PM

INTERSTATE COMMERCE COMMISSION

Grand Trunk Western Railroad Co

Law Department

131 West Lafayette Boulevard
Detroit, Michigan 48226
(313) 962-2260

May 23, 1978
File No. 352

Secretary
Interstate Commerce Commission
Washington, D.C. 20423

No. 8-145437
MAY 25 1978
Date
Fee \$ 50
ICC Washington, D. C.

Dear Sir:

Herewith for recordation under the provisions of Section 20c of the Interstate Commerce Act are counterparts of a Construction and Conditional Sale Agreement dated as of May 1, 1978.

The names and addresses of the parties to said agreement are:

Vendee: Grand Trunk Western Railroad Company
131 West Lafayette Boulevard
Detroit, Michigan 48226

Guarantor: Grand Trunk Corporation
477 Congress Street
Portland, Maine 04101

Vendor: National Bank of Detroit, as Agent
Woodward Avenue at Fort Street
Detroit, Michigan 48232

The equipment covered by said agreement consists of 100 40-foot box cars stretched to 50 feet and bearing the road numbers GTW 597900 to 597999, both inclusive, and also bearing the legend "Ownership Subject to a Security Agreement filed under the Interstate Commerce Act, Section 20c."

The undersigned is the Vendee and has knowledge of the matters set forth in the enclosed document.

RECEIVED
MAY 25 2 28 PM '78
CERTIFICATION UNIT

Handwritten signature: C. Danielson

Secretary
Page Two
May 23, 1978

Enclosed is a check for \$50 for the required recordation fee.

Please accept for recordation one counterpart of said agreement, stamp the remaining counterparts with your recordation number and return them to the delivering messenger.

Sincerely,

A handwritten signature in dark ink, appearing to read "R. J. White", is written over a horizontal line.

Treasurer - Grand Trunk Western
Railroad Company

Interstate Commerce Commission
Washington, D.C. 20423

5/25/78

OFFICE OF THE SECRETARY

Grand Trunk Western Railroad Co.
131 West LaFayette Blvd.
Detroit, Michigan 48226

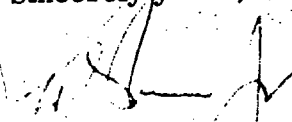
Dear Sir:

The enclosed document(s) was recorded pursuant to the
provisions of Section 20(c) of the Interstate Commerce Act,

49 U.S.C. 20(c), on **5/25/78** at **2:30pm**,

and assigned recordation number(s) **9403**

Sincerely yours,


H.G. Homme, Jr.
Acting Secretary

Enclosure(s)

SE-30-T
(6/77)

9403
RECORDATION NO. Filed & Recorded

MAY 25 1978 -2 30 PM

~~INTERSTATE~~ COMMERCE COMMISSION

CONSTRUCTION AND
CONDITIONAL SALE AGREEMENT

Dated as of May 1, 1978,

Among

GRAND TRUNK WESTERN RAILROAD COMPANY,

GRAND TRUNK CORPORATION,

and

NATIONAL BANK OF DETROIT, as Agent.

CONSTRUCTION AND
CONDITIONAL SALE AGREEMENT

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CONSTRUCTION AND CONDITIONAL SALE AGREEMENT dated as of May 1, 1978, among GRAND TRUNK WESTERN RAILROAD COMPANY, a Michigan and an Indiana corporation (hereinafter called the Railroad), GRAND TRUNK CORPORATION, a Delaware corporation (hereinafter called the Guarantor), and NATIONAL BANK OF DETROIT, a national banking association organized and existing under the laws of the United States of America, acting as agent under a Finance Agreement dated as of May 1, 1978 (hereinafter called the Finance Agreement), for certain institutional investors (said Bank, so acting, being hereinafter called the Agent, and said investors being hereinafter called the Investors).

WHEREAS the Railroad has agreed to construct, sell and deliver to the Agent, and the Agent has agreed to purchase, the equipment described in Schedule A hereto (hereinafter called the Equipment), which may include a limited number of usable parts from box cars previously acquired by the Railroad; and

WHEREAS the Railroad has agreed to purchase from the Agent each unit of Equipment acquired by the Agent, payment therefor to be made in instalments, with the Agent to retain title to the Equipment until the purchase price therefor shall have been paid to it in full, together with interest thereon, all as more particularly set forth below; and

WHEREAS the Guarantor is willing to guarantee to the Agent the due and punctual payment of all sums payable by, and the due and punctual performance of all other obligations of, the Railroad under this Agreement and to make certain further agreements as hereinafter set forth;

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements hereinafter set forth, the parties hereto do hereby agree as follows:

ARTICLE 1. Construction and Sale. Pursuant to this Agreement, the Railroad shall construct the units of the Equipment to be constructed by it as described in Schedule A hereto, and will sell and deliver to the Agent, and the Agent will purchase from the Railroad and accept deliv-

ery of and pay for (as hereinafter provided), the Equipment specified in Schedule A hereto, each unit of which shall be constructed in accordance with the specifications set forth therefor in said Schedule A and in accordance with such modifications thereof as may be agreed upon in writing between the Railroad and the Agent (which specifications and modifications, if any, are hereinafter called the Specifications). The design, quality and component parts of each unit of the Equipment shall conform, on the date of completion of manufacture of each thereof, to all Department of Transportation and Interstate Commerce Commission requirements and specifications and to all standards recommended by the Association of American Railroads reasonably interpreted as being applicable to equipment of the character of such units of the Equipment and each unit of the Equipment (except to the extent, if any, referred to in Schedule A hereto and/or in Article 9 hereof) will be new railroad equipment.

ARTICLE 2. Inspection and Delivery. The Railroad will deliver the units of the Equipment to the Agent, freight charges, if any, prepaid, and, except as herein otherwise provided, in accordance with the delivery schedule set forth in Schedule A hereto.

The Railroad's obligation as to time of delivery is subject, however, to delays resulting from causes beyond the Railroad's reasonable control, including but not limited to acts of God, acts of government such as embargoes, priorities and allocations, war or war conditions, riot or civil commotion, sabotage, strikes, differences with workmen, accidents, fire, flood, explosion, damage to plant, equipment or facilities, delays in receiving necessary materials or delays of carriers or subcontractors.

Notwithstanding the preceding provisions of this Article 2, any Equipment not delivered, accepted and settled for pursuant to Article 3 hereof on or before the Cut-Off Date (as defined in Article 4 hereof) shall be excluded herefrom. If any unit or units of Equipment shall be excluded from this Agreement pursuant to the immediately preceding sentence, the Railroad and the Agent shall execute an agreement supplemental hereto limiting this Agreement to the units of Equipment not so excluded herefrom.

The Railroad agrees to inspect all materials used in the construction of the Equipment in accordance with the standard quality control practices of the Railroad. Upon

completion of each unit or of a number of units of the Equipment, such unit or units shall be presented to an inspector or other authorized representative of the Agent (who shall be an officer or employee of the Railroad) for inspection and, if each such unit conforms to the Specifications, requirements and standards applicable thereto, such inspector or representative shall, acting for both the Agent as such authorized representative and for the Railroad, execute and deliver to the Agent and the Railroad a certificate of acceptance (hereinafter called the Certificate of Acceptance) stating that such unit or units have been inspected and accepted on behalf of the Agent and the Railroad and are marked in accordance with Article 8 hereof.

ARTICLE 3. Purchase Price and Payment. The base price or prices per unit of the Equipment are set forth in Schedule A hereto. Such base price or prices are subject to such increase or decrease as is agreed to by the Railroad and the Agent. The term "Purchase Price" as used herein shall mean the base price or prices as so increased or decreased; provided, however, the Purchase Price for all the Equipment shall not exceed \$2,000,000.

For the purpose of making settlement, the Equipment shall be divided into such number of groups of units of the Equipment, delivered to and accepted by the Agent (each such group being hereinafter called a Group), as the Railroad may specify.

The Agent, on each Closing Date fixed as hereinafter provided with respect to a Group of Equipment, shall pay to the Railroad, by bank check, the Purchase Price of such Group as stated in the invoice or invoices presented in respect of such Closing Date, provided that there shall have been delivered to the Agent at the time of delivery by the Railroad of the notice fixing the Closing Date with respect to such Group, the following documents, in such number of counterparts or copies as may reasonably be requested, in form and substance satisfactory to the Agent and to its special counsel hereinafter mentioned:

(a) a Bill of Sale from the Railroad to the Agent transferring to the Agent title to the units of the Equipment in such Group and warranting to the Agent that at the time of delivery to the Agent the Railroad had legal title to such units and good and lawful right to sell such units and that title to such units was free

of all claims, liens, security interests and other encumbrances of any nature (other than those created by this Agreement), and covenanting to defend the title to such units against the demands of all persons whomsoever based on claims originating prior to the delivery of such units by the Railroad to the Agent under this Agreement;

(b) a Certificate or Certificates of Acceptance with respect to the units of the Equipment in such Group;

(c) An invoice for the units of the Equipment in such Group and any supplemental invoice for which settlement is then being made, in each case accompanied by or having endorsed thereon a certification by the Railroad as to the correctness of the prices of such units as set forth in said invoice and that such prices do not exceed the lesser of the fair value of such units or the price which an independent car builder would charge for similar equipment;

(d) an opinion of Messrs. Cravath, Swaine & Moore, who are acting as special counsel for the Agent and the Investors, dated as of the Closing Date, stating that (i) the Finance Agreement, assuming due authorization, execution and delivery by the Investors, has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (ii) this Agreement has been duly authorized, executed and delivered and is a legal, valid and binding instrument enforceable in accordance with its terms, (iii) this Agreement has been duly filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act, and duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit has been duly published or adequate provision has been made therefor in the Canada Gazette in accordance with said Section 86, and no other filing or recordation is necessary for the protection of the rights of the Agent in and to the Equipment in any State of the United States of America, the District of Columbia, Canada or any Province thereof, (iv) security title to the units of the Equipment in such Group is validly vested in the Agent, free of all claims, liens, security interests and other encumbrances (other than those created by this Agreement),

(v) no approval of the Interstate Commerce Commission or any other governmental authority is necessary for the valid execution and delivery of this Agreement, (vi) registration of this Agreement or any certificates of interest delivered pursuant to the Finance Agreement is not required under the Securities Act of 1933, as amended, and qualification of an indenture with respect thereto is not required under the Trust Indenture Act of 1939, as amended, and (vii) the opinion of counsel for the Railroad and the Guarantor referred to in subparagraph (e) below is satisfactory in form and scope to said special counsel and in their opinion the Agent and the Investors are justified in relying thereon; and such opinion shall also cover such other matters as may reasonably be requested by the Agent or the Investors; and

(e) a favorable opinion of counsel for the Railroad and the Guarantor dated as of the Closing Date, to the effect set forth in clauses (i), (ii), (iii), (iv), (v) and (vi) of subparagraph (d) above and stating that (i) each of the Railroad and the Guarantor is a duly organized and existing corporation in good standing under the laws of its state of incorporation and has the power and authority to own its properties and to carry on its business as now conducted; and (ii) the execution and delivery by the Railroad and the Guarantor of this Agreement and the Finance Agreement do not violate any provision of any law, any order of any court or governmental agency, the charter or By-laws of the Railroad or the Guarantor, or any indenture, agreement, or other instrument to which the Railroad or the Guarantor is a party or by which it, or any of its property is bound, and will not be in conflict with, result in the breach of, or constitute, with due notice or lapse of time or both, a default under, any such indenture, agreement or other instrument, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Railroad or the Guarantor;

(f) a Certificate of a Vice President of each of the Railroad and the Guarantor, dated as of such Closing Date, to the effect that (i) no event of default as specified in this Agreement or any event which with the lapse of time and/or notice provided for in this Agreement would constitute such an event of default has occurred and is continuing, and (ii) no Federal tax

liens (including tax liens filed pursuant to Section 6323 of the Internal Revenue Code of 1954, as amended) and to the best of his knowledge and belief no other tax liens have been filed and are currently in effect which would adversely affect the title of the Agent to the Equipment; and

(g) evidence that releases discharging and terminating all claims, liens, security interests and other encumbrances, if any, in the units of the Equipment in such Group and in any of the materials used in the construction thereof, which originated prior to the recording of this Agreement pursuant to Article 20 hereof, have been duly executed and filed where necessary.

(h) (i) an opinion of special Canadian counsel for the Railroad and the Guarantor to the effect that this Agreement had been duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit has been duly published or adequate provision has been made therefor in the Canada Gazette in accordance with said Section 86 and no other filing or recordation is necessary for the protection of the rights of the Agent in or to the equipment in Canada or any province thereof, (ii) no authorization or approval from any governmental ministry or agency or public regulatory body in Canada is necessary for the due execution and delivery by the Railroad or the Guarantor of this Agreement or for the validity or enforceability of any thereof and (iii) the provisions of this Agreement do not contravene any applicable Canadian law;

In giving the opinions hereinabove specified in subparagraphs (d) and (e) of this Article 3, counsel may qualify any opinion to the effect that any agreement is a valid and binding instrument enforceable in accordance with its terms by a general reference to limitations as to enforceability imposed by bankruptcy, insolvency, reorganization, moratorium or other laws affecting the enforcement of creditors' rights generally. In giving the opinion specified in said subparagraph (d), counsel may rely, as to any matter governed by the law of any jurisdiction other than New York or the United States, on the opinion of counsel for the Railroad and the Guarantor as to such matter.

The obligation of the Agent hereunder to make pay-

ment for any Group is hereby expressly conditioned upon the Agent having on deposit, pursuant to the Finance Agreement, sufficient funds available to make such payment.

ARTICLE 4. Conditional Sale to Railroad. Upon completion of the sale by the Railroad to the Agent of a Group of Equipment pursuant to Articles 1, 2 and 3 of this Agreement, the Agent will sell and deliver to the Railroad and the Railroad will purchase from the Agent and accept delivery of and pay for such Group of Equipment as hereinafter provided. Delivery of such Group shall be made by the Agent to the Railroad at the point or points at which such Group shall have been delivered by the Railroad to the Agent pursuant to Article 2 of this Agreement. The Purchase Price of such Group payable by the Railroad to the Agent, as hereinafter provided (hereinafter called the "Conditional Sale Indebtedness"), shall be the same as the Purchase Price theretofore paid by the Agent pursuant to Article 3 of this Agreement and the method of payment thereof shall be as hereinafter provided.

On delivery of each unit hereunder at the place specified for delivery, the Railroad will assume the responsibility and risk of, and shall not be released from its obligations hereunder in the event of, any damage to or the destruction or loss of such unit.

The Railroad hereby acknowledges itself to be indebted to the Agent in the amount of, and hereby promises to pay in cash to the Agent at such place as the Agent may designate, the Conditional Sale Indebtedness in 16 consecutive equal (except for appropriate adjustment of the final instalment in case the amount payable pursuant to this paragraph shall not, when divided by 16, result in an amount ending in an integral cent) semiannual instalments.

The instalments of the Conditional Sale Indebtedness payable pursuant to the immediately preceding paragraph shall be payable semiannually on June 1 and December 1 in each year commencing December 1, 1978, to and including June 1, 1986. The unpaid portion of the Conditional Sale Indebtedness shall bear interest from the respective Closing Dates on which such indebtedness was incurred at the rate of 9% per annum. All such interest shall be payable, to the extent accrued, on June 1 and December 1 in each year, commencing December 1, 1978.

The term "Closing Date" with respect to any

Group of the Equipment shall mean such date (on or after June 1, 1978, and prior to December 1, 1978 [hereinafter called the Cut-Off Date]), not more than ten business days following presentation by the Railroad to the Agent of the invoice and the Certificate or Certificates of Acceptance for such Group, as shall be fixed by the Railroad by written notice delivered to the Agent at least five business days prior to the Closing Date designated therein. The term "business days" as used herein means calendar days, excluding Saturdays, Sundays and any other day on which banking institutions in Detroit, Michigan, or New York, New York, are authorized or obligated to remain closed.

All interest under this Agreement shall be calculated on the basis of a 360-day year of twelve 30-day months.

The Railroad will pay, to the extent legally enforceable, interest at the rate of 10% per annum upon all amounts remaining unpaid after the same shall have become due and payable pursuant to the terms hereof, anything herein to the contrary notwithstanding.

All payments provided for in this Agreement shall be made in such coin or currency of the United States of America as at the time of payment shall be legal tender for the payment of public and private debts. Except as provided in Article 9 hereof, the Railroad shall not have the privilege of prepaying any instalment of its indebtedness hereunder prior to the date it becomes due.

In the event the Agent, pursuant to Article 16 hereof, assigns the right to receive the payments herein provided to be made by the Railroad, the assignee thereof may request the Railroad to make and the Railroad shall make such payments to it at such address as shall be supplied to the Railroad by the assignee.

ARTICLE 5. Obligations of Guarantor. The Guarantor, for value received, hereby unconditionally guarantees to the Agent that the Conditional Sale Indebtedness and interest thereon will be duly and punctually paid when due and all other obligations of the Railroad hereunder and under the Finance Agreement will be duly and punctually performed, whether at stated maturity or by declaration or otherwise, irrespective of any enforcement against the Railroad of any

of the rights of the Agent hereunder.

The Guarantor hereby agrees that its aforesaid guaranty hereunder shall be unconditional (and shall not be subject to any defense, setoff, counterclaim or recoupment whatsoever), irrespective of the genuineness, validity, regularity or enforceability of this Agreement or the Finance Agreement. The Guarantor hereby waives diligence, presentment, demand of payment, protest, any notice of any assignment hereof in whole or in part or of any default hereunder and all notices with respect to this Agreement and all demands whatsoever hereunder. No waiver by the Agent of any of its rights hereunder and no action by the Agent to enforce any of its rights hereunder or failure to take, or delay in taking, any such action shall affect the obligations of the Guarantor hereunder. The Guarantor hereby agrees that any rights that it may acquire by reason of performance of its obligations hereunder, by subrogation or otherwise, may not be exercised against the Railroad under this Agreement or otherwise until all amounts owing hereunder to the Agent shall have been indefeasibly paid in full.

ARTICLE 6. Taxes. All payments to be made by the Railroad hereunder will be free of expense to the Agent for collection or other charges and will be free of expense to the Agent with respect to the amount of any local, state, federal or foreign taxes (other than net income, gross receipts [except gross receipts taxes in the nature of or in lieu of sales or use taxes], excess profits and similar taxes) or license fees, assessments, charges, fines or penalties hereafter levied or imposed upon or in connection with or measured by, this Agreement or any sale, use, payment, shipment, delivery or transfer of title under the terms hereof (all such expenses, taxes, license fees, assessments, charges, fines and penalties being hereinafter called impositions), all of which impositions the Railroad assumes and agrees to pay on demand. The Railroad will also pay promptly all impositions which may be imposed upon the Equipment or for the use or operation thereof or upon the earnings arising therefrom or upon the Agent solely by reason of its ownership thereof and will keep at all times all and every part of the Equipment free and clear of all impositions which might in any way affect the title of the Agent or result in a lien upon any part of the Equipment; provided, however, that the Railroad shall be under no obligation to pay any impositions of any kind so long as it is contesting in good faith and by appropriate legal proceedings such impositions

and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the property or rights of the Agent in or to the Equipment or otherwise under this Agreement. If any such impositions shall have been charged or levied against the Agent directly and paid by the Agent, the Railroad shall reimburse the Agent upon presentation of an invoice therefor, and any amounts so paid by the Agent shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Agent for any impositions so paid unless the Agent shall have been legally liable with respect thereto (as evidenced by an opinion of counsel for the Agent) or unless the Railroad shall have approved the payment thereof.

ARTICLE 7. Title to the Equipment. Notwithstanding delivery of the Equipment to the Railroad and its possession and use by the Railroad as herein provided, the Agent shall and hereby does retain the full legal title to and property in the Equipment until the Railroad shall have paid in full the Conditional Sale Indebtedness and made all other payments to be made by it under this Agreement and shall have kept and performed all its agreements herein contained. Any and all additions to the Equipment and any and all replacements of the Equipment and of parts thereof and additions thereto shall constitute accessions to the Equipment and shall be subject to all the terms and conditions of this Agreement and included in the term "Equipment" as used in this Agreement.

Except as otherwise specifically provided in Article 9 hereof, when and only when the full Conditional Sale Indebtedness, together with interest and all other payments as herein provided, shall have been paid by the Railroad, and all the Railroad's obligations herein contained shall have been performed by the Railroad, absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad without further transfer or action on the part of the Agent. However, the Agent, if so requested by the Railroad at that time, will (a) execute a bill or bills of sale for the Equipment transferring its title thereto and property therein to the Railroad, or upon its order, free of all liens and encumbrances created or retained hereby and deliver such bill or bills of sale to the Railroad at its address referred to in Article 22 hereof, (b) execute and deliver at the same place, for filing, recording or depositing in all necessary public offices, such instrument or instruments in writing as may be necessary

or appropriate in order then to make clear upon the public records the title of the Railroad to the Equipment and (c) pay to the Railroad any money paid to the Agent pursuant to Article 9 hereof and not theretofore applied as therein provided. The Railroad hereby waives and releases any and all rights, existing or that may be acquired, in or to the payment of any penalty, forfeit or damages for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file any certificate of payment in compliance with any law or statute requiring the filing of the same, except for failure to execute and deliver such bill or bills of sale or instrument or instruments or to file such certificate within a reasonable time after written demand by the Railroad.

ARTICLE 8. Marking of the Equipment. The Railroad will cause each unit of the Equipment to be kept numbered with its identifying number as set forth in Schedule A hereto, or in the case of Equipment not there listed such identifying number as shall be set forth in any amendment or supplement hereto extending this Agreement to cover such Equipment, and will keep and maintain, plainly, distinctly, permanently and conspicuously marked on each side of each unit, in letters not less than one inch in height, the words "Ownership subject to Security Agreement filed under the Interstate Commerce Act, Section 20c", or other appropriate markings approved by the Agent, with appropriate changes thereof and additions thereto as from time to time may be required by law in order to protect the Agent's title to and property in the Equipment and its rights under this Agreement. The Railroad will not place any such unit in operation or exercise any control or dominion over the same until such markings have been made thereon and will replace promptly any such markings which may be removed, defaced or destroyed. The Railroad will not change the number of any unit of the Equipment except in accordance with a statement of new number or numbers to be substituted therefor, which statement previously shall have been filed with the Agent by the Railroad and filed, recorded and deposited by the Railroad in all public offices where this Agreement shall have been filed, recorded and deposited.

Except as provided in the immediately preceding paragraph, the Railroad will not allow the name of any person, association or corporation to be placed on any unit of the Equipment as a designation that might be interpreted as a claim of ownership; provided, however, that the Railroad

may cause the Equipment to be lettered with the names or initials or other insignia of the Railroad or its affiliates.

ARTICLE 9. Casualty Occurrences; Insurance.

In the event that any unit of the Equipment shall be worn out, lost, stolen, destroyed, irreparably damaged or otherwise rendered permanently unfit for use from any cause whatsoever, or taken or requisitioned by condemnation or otherwise (such occurrences being hereinafter called Casualty Occurrences), the Railroad shall promptly and fully inform the Agent in regard thereto (after it has knowledge of such Casualty Occurrence). When the aggregate Casualty Value (as defined herein) of all units of the Equipment having suffered a Casualty Occurrence (exclusive of units having suffered a Casualty Occurrence with respect to which a payment shall have been made pursuant to this Article 9) shall exceed \$100,000, or such lesser amount as the Railroad may elect, the Railroad, within 30 days after it has knowledge of such event, shall promptly pay to the Agent a sum equal to the aggregate Casualty Value of such units of the Equipment as of the date of such payment and shall file with the Agent a certificate of an officer of the Railroad setting forth the Casualty Value of each unit of the Equipment suffering a Casualty Occurrence.

Any money paid to the Agent pursuant to the preceding paragraph of this Article 9 shall, as the Railroad may direct in a written instrument filed with the Agent, be applied (so long as no event of default shall have occurred and be continuing), in whole or in part, to prepay instalments of Conditional Sale Indebtedness or toward the cost of a unit or units of standard-gauge railroad rolling stock (other than passenger or work equipment of types other than locomotives) first put into service no earlier than the date of this Agreement, to replace units suffering a Casualty Occurrence. In case any money is applied to prepay indebtedness, it shall be so applied, on the date for the payment of Conditional Sale Indebtedness next following receipt by the Agent of such written direction, to reduce instalments thereafter falling due pro rata.

The Casualty Value of each unit of the Equipment (other than a replacement unit) shall be deemed to be that amount which bears the same ratio to the amount paid by the Agent for such unit pursuant to Article 3 hereof as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 9) as of the date payment is made with respect to

such Casualty Occurrence bears to the original Conditional Sale Indebtedness. The Casualty Value of each replacement unit shall be deemed to be that amount which bears the same ratio to the portion of the cost thereof paid by the Railroad as the unpaid Conditional Sale Indebtedness (without giving effect to any prepayments then or theretofore made pursuant to this Article 9) as of the date payment is made with respect to such Casualty Occurrence bears to the unpaid Conditional Sale Indebtedness (without giving effect to any such prepayments) as of the date of acquisition of such replacement unit.

The Railroad will cause any replacement unit or units to be marked as provided in Article 8 hereof. Any and all such replacements of Equipment shall constitute accessions to the Equipment and shall be subject to all appropriate terms and conditions of this Agreement as though part of the original Equipment delivered hereunder and shall be included in the term "Equipment" as used in this Agreement. Title to all such replacement units shall be free and clear of all liens and encumbrances except the liens permitted by the second paragraph of Article 13 hereof and shall be taken initially and shall remain in the name of the Agent subject to the provisions hereof, and the Railroad shall execute, acknowledge, deliver, file, record or deposit all such documents and do any and all such acts as may be necessary to cause such replacement units to come under and be subject to this Agreement and to protect the title of the Agent to such replacement units. All such replacement units shall be guaranteed and warranted in like manner as is customary at the time for similar equipment.

Whenever the Railroad shall file with the Agent a written direction to apply amounts toward the cost of any replacement unit or units, the Railroad shall file therewith:

(1) a certificate of an officer of the Railroad certifying that such replacement unit is standard-gauge railroad rolling stock (other than work or passenger equipment of types other than locomotives) first put into service no earlier than the date of this Agreement, with a remaining useful life at least as long as the Equipment being replaced (without giving effect to the Casualty Occurrence) and has been marked as required by the provisions of Article 8 hereof and certifying, in the event such replacement unit is new equipment, the

cost of such replacement unit and, in the event such replacement unit shall be equipment theretofore used in railroad service, the fair value thereof and the original cost thereof and that the cost to the Agent does not exceed the lesser of the fair value thereof or the original cost thereof less depreciation at a rate of 6% per annum; and

(2) an opinion of counsel for the Railroad that title to such replacement unit is vested in the Agent free and clear from all claims, liens, security interests and other encumbrances except the rights of the Railroad under this Agreement, and that such unit has come under and become subject to this Agreement and all necessary filings and recordings have been made to perfect the interests of the Agent therein.

So long as no event of default shall have occurred and be continuing, any money paid to the Agent pursuant to this Article 9 shall, if the Railroad shall in writing so direct, be invested, pending its application as hereinabove provided, in such of the following as may be specified in such written direction: (i) direct obligations of the United States of America or obligations for which the faith of the United States is pledged to provide for the payment of principal and interest, (ii) open market commercial paper rated A-1 by Standard & Poor's Corporation or prime-1 by NCO/Moody's Commercial Paper Division of Moody's Investors Service, Inc., or the successor of either of them, or (iii) certificates of deposit of commercial banks in the United States of America having a capital and surplus aggregating at least \$1,000,000,000, in each case maturing in not more than one year from the date of such investment (such investments being hereinafter called Investments). Any such obligations shall from time to time be sold and the proceeds reinvested in such Investments as the Railroad may in writing direct. Any interest received by the Agent on any Investments shall be held by the Agent and applied as hereinafter provided. Upon any sale or the maturity of any Investments, the proceeds thereof, plus any interest received by the Agent thereon, up to the cost (including accrued interest) thereof, shall be held by the Agent for application pursuant to this Article 9, and any excess shall be paid to the Railroad. If such proceeds (plus such interest) shall be less than such cost, the Railroad will promptly pay to the Agent an amount equal to such deficiency. The Railroad will pay all expenses incurred by the Agent in connection with the purchase and sale of Investments.

If one or more events of default shall have occurred and be continuing, all money held by the Agent pursuant to this Article 9 (including, for this purpose, Investments) shall be applied by the Agent as if such money were money received upon the sale of Equipment pursuant to Article 18 hereof.

In order to facilitate the sale or other disposition of any Equipment suffering a Casualty Occurrence, the Agent shall, upon request of the Railroad, after payment by the Railroad of a sum equal to the Casualty Value of such Equipment, execute and deliver to the Railroad or the Railroad's vendee, assignee or nominee, a bill of sale (without warranties) for such Equipment, and such other documents as may be required to release such Equipment from the terms and scope of this Agreement, in such form as may be reasonably requested by the Railroad.

The Railroad will at all times prior to the payment of the full Conditional Sale Indebtedness, together with interest thereon and all other payments required hereby, at its own expense, cause to be carried and maintained insurance or self-insurance in respect of the Equipment at the time subject hereto in amounts and against risks customarily insured against by railroad companies on similar equipment, and in any event in amounts and against risks comparable to those insured against by the Railroad on similar equipment owned by it.

ARTICLE 10. Maintenance; Compliance with Laws and Rules. The Railroad will at all times maintain the Equipment or cause the Equipment to be maintained in good order and repair at its own expense, normal wear and tear excepted.

During the term of this Agreement, the Railroad will at all times comply in all respects with all laws of the jurisdictions in which its operations involving the Equipment may extend, with the interchange rules of the Association of American Railroads and with all lawful rules of the Department of Transportation, Interstate Commerce Commission and any other legislative, executive, administrative or judicial body exercising any power or jurisdiction over the Equipment, to the extent that such laws and rules affect the title, operation or use of the Equipment, and in the event that such laws or rules require any alteration, replacement or addition of any part on any unit of the Equip-

ment, the Railroad will conform therewith, at its own expense; provided, however, that the Railroad may, in good faith, contest the validity or application of any such law or rule in any reasonable manner which does not, in the opinion of the Agent, adversely affect the property or rights of the Agent under this Agreement.

ARTICLE 11. Reports and Inspections. On or before March 31 in each year, commencing with the year 1979, the Railroad shall furnish to the Agent an accurate statement signed by an officer of the Railroad (a) setting forth as at the preceding December 31 the amount, description and numbers of all units of the Equipment that have suffered a Casualty Occurrence during the preceding calendar year (or since the date of this Agreement in the case of the first such statement) or that have been withdrawn from use pending repairs (other than running repairs) and such other information regarding the condition and state of repair of the Equipment as the Agent may reasonably request and (b) stating that, in the case of all Equipment repaired or repainted during the period covered by such statement, the numbers and markings required by Article 8 hereof have been preserved or replaced. The Agent shall have the right, by its agents, to inspect the Equipment and the Railroad's records with respect thereto at such reasonable times as the Agent may request during the term of this Agreement.

ARTICLE 12. Possession and Use. The Railroad, so long as an event of default shall not have occurred under this Agreement and be continuing, shall be entitled to the possession of the Equipment and the use thereof upon the lines of railroad owned or operated by it either alone or jointly with others and whether under lease or otherwise, or upon the lines of railroad owned or operated by any railroad company controlled by, or under common control with, the Railroad, or over which it has trackage rights, or upon connecting and other carriers in the usual interchange of traffic or pursuant to run-through agreements, from and after delivery of the Equipment by the Agent to the Railroad, but only upon and subject to all the terms and conditions of this Agreement.

ARTICLE 13. Prohibition Against Liens. The Railroad will pay or discharge any and all sums claimed by any party from, through or under the Railroad or its successors or assigns which, if unpaid, might become a lien, charge or security interest on the Equipment, or any unit thereof,

equal or superior to the Agent's title thereto or property or interest therein; provided, however, that the Railroad shall be under no obligation to pay or discharge any such claim so long as it is contesting in good faith and by appropriate legal proceedings such claim and the nonpayment thereof does not, in the opinion of the Agent, adversely affect the property or rights of the Agent in or to the Equipment or otherwise under this Agreement. Any amounts paid by the Agent in discharge of liens, charges or security interests upon the Equipment shall be secured by and under this Agreement; provided, however, that the Railroad shall not be obligated to reimburse the Agent for any amounts so paid by the Agent unless the Railroad shall have approved the payment thereof or the Agent shall have received an opinion of counsel that such claim would constitute a lien, charge or security interest on or in the Equipment adversely affecting the property or rights of the Agent in or to the Equipment.

This covenant will not be deemed breached by reason of liens for taxes, assessments or governmental charges or levies, in each case not due and delinquent, or undetermined or inchoate materialmen's, mechanics', workmen's, repairmen's or other like liens arising in the ordinary course of business and, in each case, not delinquent.

ARTICLE 14. Railroad's Indemnities, Representation and Warranties. The Railroad agrees to indemnify, protect and hold harmless the Agent from and against all losses, damages, injuries, liabilities, claims and demands whatsoever, regardless of the cause thereof, and expenses in connection therewith, including counsel fees arising out of retention by the Agent of title to the Equipment, the use and operation thereof by the Railroad during the period when title thereto remains in the Agent or the transfer of title to the Equipment by the Agent pursuant to any of the provisions of this Agreement. This covenant of indemnity shall continue in full force and effect notwithstanding the full payment of all sums due under this Agreement, or the satisfaction, discharge or termination of this Agreement in any manner whatsoever.

The Railroad will bear the risk of, and shall not be released from its obligations under the Agreement in the event of, any damage to or the destruction or loss of any unit of the Equipment.

The Railroad represents that it is not entering into

this Agreement directly or indirectly in connection with any arrangement or understanding in any way involving any employee benefit plan (other than a governmental plan) with respect to which it is a party in interest, all within the meaning of the Employee Retirement Income Security Act of 1974.

The Railroad warrants that the Equipment will be built in accordance with the requirements, specifications and standards set forth or referred to in Article 1 hereof and warrants that the Equipment will be free from defects in material and workmanship under normal use and service.

ARTICLE 15. Patent Indemnities. The Railroad agrees to indemnify, protect and hold harmless the Agent from and against any and all liability, claims, costs, charges and expenses, including royalty payments and counsel fees, in any manner imposed upon or accruing against the Agent or its assigns because of the use in or about the construction or operation of any of the Equipment of any design, system, process, formula, combination, article or material which infringes or is claimed to infringe on any patent or other right.

ARTICLE 16. Assignments. The Railroad will not sell, assign, transfer or otherwise dispose of its rights under this Agreement or, except as provided in Article 12 hereof, transfer the right to possession of any unit of the Equipment without first obtaining the written consent of the Agent. An assignment, transfer or disposition to a railroad company organized under the laws of the United States of America or any of the states thereof which shall acquire all or substantially all the lines of railroad of the Railroad, and which, by execution of an appropriate instrument satisfactory to the Agent, shall assume and agree to perform each of, and all, the obligations and covenants of the Railroad under this Agreement, shall not be deemed a breach of this covenant, provided such railroad company immediately after such acquisition shall have capital and surplus aggregating at least that of the Railroad immediately prior to such acquisition.

All or any of the rights, benefits and advantages of the Agent under this Agreement, including the right to receive the payments herein provided to be made by the Railroad, may be assigned by the Agent and reassigned by any assignee at any time or from time to time.

Upon any such assignment either the assignor or the assignee shall give written notice to the Railroad, together with a counterpart or copy of such assignment, stating the identity and post office address of the assignee, and such assignee shall by virtue of such assignment acquire all of the Agent's right, title and interest in and to the Equipment and this Agreement, or in and to a portion thereof, as the case may be, subject only to such reservations as may be contained in such assignment. From and after the receipt by the Railroad of the notification of any such assignment, all payments thereafter to be made by the Railroad under this Agreement shall, to the extent so assigned, be made to the assignee in such manner as it may direct.

In the event of any such transfer or assignment, or successive transfers or assignments by the Agent, of title to the Equipment and of the Agent's rights hereunder with respect thereto, the Railroad will, whenever requested by such transferee or assignee, change the markings to be placed on each side of each unit of the Equipment so as to indicate the title of such transferee or assignee to the Equipment, such markings to be such as shall be specified by such transferee or assignee, subject to any requirements of the laws of the jurisdictions in which the Equipment shall be operated by the Railroad.

ARTICLE 17. Defaults. In the event that any one or more of the following events of default shall occur and be continuing, to wit:

(a) the Railroad shall fail to pay in full any instalment of Conditional Sale Indebtedness or any other sum payable by the Railroad as provided in this Agreement within five days after payment thereof shall be due hereunder and the same shall not have been paid by the Guarantor; or

(b) the Railroad and the Guarantor shall, for more than 30 days after the Agent shall have demanded in writing performance thereof, fail or refuse to comply with any covenant, agreement, term or provision of this Agreement, or of any agreement entered into concurrently herewith relating to the financing of the Equipment on their part to be kept or performed or to make provision satisfactory to the Agent for such compliance; or

(c) a petition for reorganization under Section

77 of the Bankruptcy Act, as now constituted or as said Section 77 may be hereafter amended, shall be filed by or against the Railroad or the Guarantor and, unless such petition shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees appointed (whether or not subject to ratification) in such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees, within 30 days after such appointment, if any, or 60 days after such petition shall have been filed, whichever shall be earlier; or

(d) any other proceedings shall be commenced by or against the Railroad or the Guarantor for any relief under any bankruptcy or insolvency law, or law relating to the relief of debtors, readjustments of indebtedness, reorganizations, arrangements, compositions or extensions (other than a law which does not permit any readjustment of the indebtedness payable hereunder), and, unless such proceedings shall have been dismissed, nullified, stayed or otherwise rendered ineffective (but then only so long as such stay shall continue in force or such ineffectiveness shall continue), all the obligations of the Railroad or the Guarantor, as the case may be, under this Agreement shall not have been (and shall not continue to have been) duly assumed in writing, pursuant to a court order or decree, by a trustee or trustees or receiver or receivers appointed (whether or not subject to ratification) for the Railroad or the Guarantor or for its property in connection with any such proceedings in such manner that such obligations shall have the same status as obligations incurred by such trustee or trustees or receiver or receivers, within 30 days after such appointment, if any, or 60 days after such proceedings shall have been commenced, whichever shall be earlier; or

(e) the Railroad shall make or suffer any unauthorized assignment or transfer of this Agreement or any interest herein or any unauthorized transfer of the right to possession of any unit of the Equipment;

then at any time after the occurrence of such an event of default the Agent may, upon written notice to the Railroad and the Guarantor and upon compliance with any mandatory legal requirements then in force and applicable to such action by the Agent, declare (hereinafter called a Declaration of Default) the entire Conditional Sale Indebtedness, together with the interest thereon then accrued and unpaid, immediately due and payable, without further demand, and thereafter the aggregate of the unpaid balance of such Indebtedness and interest shall bear interest from the date of such Declaration of Default at the rate per annum specified in Article 4 hereof as being applicable to amounts remaining unpaid after becoming due and payable, to the extent legally enforceable. The Agent shall thereupon be entitled to recover judgment for the entire unpaid balance of the Conditional Sale Indebtedness so payable, with interest as aforesaid, and to collect such judgment out of any property of the Railroad or the Guarantor wherever situated. The Railroad and the Guarantor shall promptly notify the Agent of any event which has come to their attention which constitutes, or which with the giving of notice and/or lapse of time could constitute, an event of default under this Agreement.

The Agent may at its election waive any such event of default and its consequences and rescind and annul any Declaration of Default by notice to the Railroad and the Guarantor in writing to that effect, and thereupon the respective rights of the parties shall be as they would have been if no such event of default had occurred and no Declaration of Default had been made. Notwithstanding the provisions of this paragraph, it is expressly understood and agreed by the Railroad and the Guarantor that time is of the essence of this Agreement and that no such waiver, rescission or annulment shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

ARTICLE 18. Remedies. At any time during the continuance of a Declaration of Default, the Agent may, subject to compliance with any mandatory legal requirements then in force and applicable to the action to be taken by the Agent, take or cause to be taken by its agent or agents immediate possession of the Equipment, or one or more of the units thereof, without liability to return to the Railroad any sums theretofore paid and free from all claims whatsoever, except as hereinafter in this Article 18 expressly provided, and may remove the same

from possession and use of the Railroad or any other person and for such purpose may enter upon the Railroad's premises or any other premises where the Equipment may be located (without judicial process if this can be done without breach of the peace) and may use and employ in connection with such removal any supplies, services and aids and any available trackage and other facilities or means of the Railroad.

In case the Agent shall demand possession of the Equipment pursuant to this Agreement and shall reasonably designate a point or points upon the premises of the Railroad for the delivery of the Equipment to the Agent, the Railroad shall, at its own expense, forthwith and in the usual manner (including, but not by way of limitation, giving prompt telegraphic and written notice to the Association of American Railroads and all railroads to which any part of the Equipment has been interchanged to return the Equipment so interchanged), cause (a) the Equipment to be moved to such point or points on its lines as shall be designated by the Agent and shall there deliver the Equipment or cause it to be delivered to the Agent and (b) the Equipment to be moved to such interchange point or points of the Railroad as shall be designated by the Agent upon any sale, lease or other disposal of all or any part of the Equipment by the Agent. At the option of the Agent, the Agent may keep the Equipment on any of the lines or premises of the Railroad until the Agent shall have leased, sold or otherwise disposed of the same, and for such purpose the Railroad agrees to furnish, without charge for rent or storage, the necessary facilities at any point or points selected by the Agent reasonably convenient to the Railroad and, at the Railroad's risk, to permit inspection of the Equipment by the Agent, the Agent's representatives and prospective purchasers and users; provided, however, that the Railroad shall not be liable in connection with such inspection, except in the case of negligence of the Railroad or any of its employees or its agents, for any injury to or death of any person exercising inspection rights under this paragraph. This agreement to deliver the Equipment and furnish facilities as hereinbefore provided is of the essence of the agreement between the parties, and, upon application to any court of equity having jurisdiction in the premises, the Agent shall be entitled to a decree against the Railroad requiring specific performance hereof. The Railroad hereby expressly waives any and all claims against the Agent and its agent or agents for damages of whatever nature in connection with any retaking of any unit of the Equipment in any reasonable manner.

At any time during the continuance of a Declaration of Default, the Agent (after retaking possession of the Equipment as hereinbefore in this Article 18 provided) may at its election and upon such notice as is hereinafter set forth retain the Equipment in satisfaction of the entire indebtedness in respect of the Purchase Price of the Equipment and make such disposition thereof as the Agent shall deem fit. Written notice of the Agent's election to retain the Equipment shall be given to the Railroad by telegram or registered mail, addressed as provided in Article 22 hereof, and to any other persons to whom the law may require notice, within 30 days after such Declaration of Default. In the event that the Agent should elect to retain the Equipment and no objection is made thereto within the 30-day period described in the second proviso below, all the Railroad's rights in the Equipment shall thereupon terminate and all payments made by the Railroad may be retained by the Agent as compensation for the use of the Equipment by the Railroad; provided, however, that if the Railroad, before the expiration of the 30-day period described in the proviso below, should pay or cause to be paid to the Agent the total unpaid balance of the Conditional Sale Indebtedness, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Agent in retaking possession of, removing and storing the Equipment and the Agent's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad; provided, further, that if the Railroad or any other persons notified under the terms of this paragraph object in writing to the Agent within 30 days from the receipt of notice of the Agent's election to retain the Equipment, then the Agent may not so retain the Equipment, but shall sell, lease or otherwise dispose of it or continue to hold it pending sale, lease or other disposition as hereinafter provided or as may otherwise be permitted by law. If the Agent shall have given no notice to retain as hereinabove provided or notice of intention to dispose of the Equipment in any other manner, it shall be deemed to have elected to sell the Equipment in accordance with the provisions of this Article 18.

At any time during the continuance of a Declaration of Default, the Agent, with or without retaking possession thereof, at its election and upon reasonable notice to the Railroad and to any other persons to whom the law may require notice of the time and place, may sell the Equipment, or any unit thereof, free from any and all

claims of the Railroad or any other party claiming from, through or under the Railroad, at law or in equity, at public or private sale and with or without advertisement as the Agent may determine; provided, however, that if, prior to such sale and prior to the making of a contract for such sale, the Railroad should tender full payment of the total unpaid balance of the indebtedness in respect of the Purchase Price of the Equipment, together with interest thereon accrued and unpaid and all other payments due under this Agreement as well as expenses of the Agent in retaking possession of, removing, storing, holding and preparing the Equipment for, and otherwise arranging for, the sale and the Agent's reasonable attorneys' fees, then in such event absolute right to the possession of, title to and property in the Equipment shall pass to and vest in the Railroad. The proceeds of such sale, less the attorneys' fees and any other expenses incurred by the Agent in retaking possession of, removing, storing, holding, preparing for sale and selling the Equipment, shall be credited on the amount due to the Agent under the provisions of this Agreement.

Any sale hereunder may be held or conducted at such place or places and at such time or times as the Agent may specify, in one lot and as an entirety or in separate lots and without the necessity of gathering at the place of sale the property to be sold, and in general in such manner as the Agent may determine. The Agent or the Railroad may bid for and become the purchaser of the Equipment, or any unit thereof, so offered for sale. The Railroad shall be given written notice of such sale not less than ten days prior thereto, by telegram or registered mail addressed to the Railroad as provided in Article 22 hereof. If such sale shall be a private sale (which shall be deemed to mean only a sale where an advertisement for bids has not been published in a newspaper of general circulation or a sale where less than 40 offerees have been solicited in writing to submit bids), it shall be subject to the right of the Railroad to purchase or provide a purchaser, within ten days after notice of the proposed sale price, at the same price offered by the intending purchaser or a better price. In the event that the Agent shall be the purchaser of the Equipment, it shall not be accountable to the Railroad (except to the extent of surplus money received as hereinafter provided in this Article 18), and in payment of the purchase price therefor the Agent shall be entitled to have credited on account thereof all or any part of the sums due to the Agent from the Railroad hereunder.

Each and every power and remedy hereby specifically given to the Agent shall be in addition to every other power and remedy hereby specifically given or now or hereafter existing at law or in equity, and each and every power and remedy may be exercised from time to time and simultaneously and as often and in such order as may be deemed expedient by the Agent. All such powers and remedies shall be cumulative, and the exercise of one shall not be deemed a waiver of the right to exercise any other or others. No delay or omission of the Agent in the exercise of any such power or remedy and no renewal or extension of any payments due hereunder shall impair any such power or remedy or shall be construed to be a waiver of any default or an acquiescence therein. Any extension of time for payment hereunder or other indulgence duly granted to the Railroad shall not otherwise alter or affect the Agent's rights or the Railroad's obligations hereunder. The Agent's acceptance of any payment after it shall have become due hereunder shall not be deemed to alter or affect the Railroad's obligations or the Agent's rights hereunder with respect to any subsequent payments or default therein.

If, after applying all sums of money realized by the Agent under the remedies herein provided, there shall remain any amount due to it under the provisions of this Agreement, the Railroad shall pay the amount of such deficiency to the Agent upon demand, together with interest from the date of such demand to the date of payment by the Railroad at the rate per annum set forth in Article 4 hereof, applicable to amounts remaining unpaid after becoming due and payable. If the Railroad shall fail to pay such deficiency, the Agent may bring suit therefor and shall be entitled to recover a judgment therefor against the Railroad. If, after applying as aforesaid all sums realized by the Agent, there shall remain a surplus in the possession of the Agent, such surplus shall be paid to the Railroad.

The Railroad will pay all reasonable expenses, including attorneys' fees, incurred by the Agent in enforcing its remedies under the terms of this Agreement. In the event that the Agent shall bring any suit to enforce any of its rights hereunder and shall be entitled to judgment, then in such suit the Agent may recover reasonable expenses, including attorneys' fees, and the amount thereof shall be included in such judgment.

The foregoing provisions of this Article 18 are

subject in all respects to all mandatory legal requirements at the time in force and applicable thereto.

ARTICLE 19. Applicable State Laws. Any provision of this Agreement prohibited by any applicable law of any jurisdiction (which is not overridden by applicable Federal law) shall as to such jurisdiction be ineffective, without modifying the remaining provisions of this Agreement. Where, however, the conflicting provisions of any such applicable law may be waived, they are hereby waived by the Railroad and the Guarantor to the full extent permitted by law, it being the intention of the parties hereto that this Agreement shall be deemed to be a conditional sale and enforced as such.

Except as otherwise provided in this Agreement, the Railroad, and the Guarantor to the full extent permitted by law, hereby waive all statutory or other legal requirements for any notice of any kind, notice of intention to take possession of or to sell or lease the Equipment, or any unit thereof, and any other requirements as to the time, place and terms of the sale or lease thereof, any other requirements with respect to the enforcement of the Agent's rights under this Agreement and any and all rights of redemption.

ARTICLE 20. Recording. The Railroad will cause this Agreement, any assignments hereof and any amendments or supplements hereto or thereto to be filed and recorded with the Interstate Commerce Commission in accordance with Section 20c of the Interstate Commerce Act and to be duly deposited in the Office of the Registrar General of Canada pursuant to Section 86 of the Railway Act of Canada and notice of such deposit to be duly published, or adequate provision made therefor in the Canada Gazette in accordance with said Section 86. The Railroad will from time to time do and perform any other act and will execute, acknowledge, deliver, file, register, deposit and record any and all further instruments required by law or reasonably requested by the Agent for the purpose of proper protection, to the satisfaction of counsel for the Agent, of its title to the Equipment and its rights under this Agreement or for the purpose of carrying out the intention of this Agreement. The Railroad will promptly furnish to the Agent certificates or other evidence of such filing, registering, depositing and recording satisfactory to the Agent.

ARTICLE 21. Payment of Expenses. The Railroad will pay all reasonable costs and expenses, including the

fees and expenses of counsel for the Agent, incident to this Agreement (including the fees and expenses of the Agent, as agent under the Finance Agreement) and any instrument supplemental or related hereto or thereto, including all fees and expenses of counsel for the Agent and for any party acquiring interests under the Finance Agreement, and all reasonable costs and expenses in connection with the transfer by any party of interests acquired thereunder.

ARTICLE 22. Notice. Any notice hereunder to any of the parties designated below shall be deemed to be properly served if delivered or mailed to it at the following specified addresses:

(a) to the Railroad and the Guarantor, 131 W. Lafayette Boulevard, Detroit, Michigan 48226,

(b) to the Agent, Woodward Avenue and Fort Street, Detroit, Michigan 48232, and

(c) to any assignee of the Agent or of the Railroad, at such address as may have been furnished in writing to each of the other parties hereto by such assignee,

or at such other address as may have been furnished in writing by such party to the other parties to this Agreement.

ARTICLE 23. Article Headings; Effect and Modification of Agreement. All article headings are inserted for convenience only and shall not affect any construction or interpretation of this Agreement.

This Agreement, including the Schedule hereto, exclusively states the rights of the Agent, the Railroad and the Guarantor with respect to the Equipment and supersedes all other agreements, oral or written, with respect to the Equipment. No variation or modification of this Agreement and no waiver of any of its provisions or conditions shall be valid unless in writing and signed by duly authorized officers of the Agent, the Railroad and the Guarantor.

ARTICLE 24. Law Governing. The Railroad warrants that its chief place of business and its chief executive offices are located in the state specified in clause (a) of Article 22 hereof. The terms of this Agreement and all rights and obligations hereunder shall be governed by the laws of such state; provided, however, that the parties


shall be entitled to all rights conferred by Section 20c of the Interstate Commerce Act and such additional rights arising out of the filing, recording or deposit hereof, if any, and of any assignment hereof as shall be conferred by the laws of the several jurisdictions in which this Agreement or any assignment hereof shall be filed, recorded or deposited, or in which any unit of the Equipment shall be located, and any rights arising out of the marking of the units of Equipment as provided in Article 8 hereof.

ARTICLE 25. Execution. This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts together shall constitute but one and the same contract, which shall be sufficiently evidenced by any such original counterpart. Although this Agreement is dated, for convenience, as of the date first set forth above, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates stated in the acknowledgments hereto annexed.

IN WITNESS WHEREOF, the parties hereto, each pursuant to due authority, have caused this instrument to be executed in their respective corporate names by their officers, thereunto duly authorized, and their respective corporate seals to be hereunto affixed, duly attested, all as of the date first above written.

GRAND TRUNK WESTERN RAILROAD
COMPANY,

by



~~Vice President~~
Treasurer

[Corporate Seal]

Attest:



Assistant Secretary

GRAND TRUNK CORPORATION,

by



Vice President

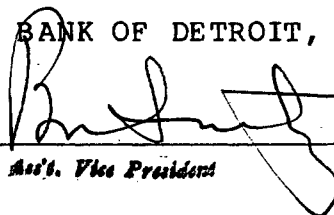
[Corporate Seal]

Attest:


Assistant Secretary

NATIONAL BANK OF DETROIT, as Agent,

by


Asst. Vice President

Attest:

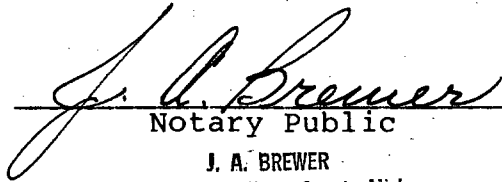

SENIOR VICE PRESIDENT & CASHIER

STATE OF MICHIGAN,)
) ss.:
CITY OF WAYNE,)

On this 23rd day of May 1978, before me personally appeared R. L. Ritchie, to me personally known, who, Treasurer being by me duly sworn, says that he is a ~~Vice President~~ of RAILROAD GRAND TRUNK WESTERN COMPANY, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed this date on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My Commission expires

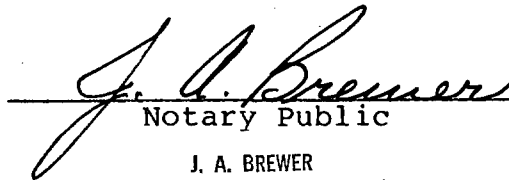

Notary Public
J. A. BREWER
Notary Public, Wayne County, Mich.
My Commission Expires Dec. 16, 1981

STATE OF MICHIGAN,)
) ss.:
CITY OF WAYNE,)

On this 23rd day of May 1978, before me personally appeared P. E. Jetro, to me personally known, who, being by me duly sworn, says that he is a Vice President of GRAND TRUNK CORPORATION, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed this date on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.

[NOTARIAL SEAL]

My Commission expires


Notary Public
J. A. BREWER
Notary Public, Wayne County, Mich.
My Commission Expires Dec. 16, 1981

STATE OF MICHIGAN,)
) ss.:
CITY OF WAYNE,)

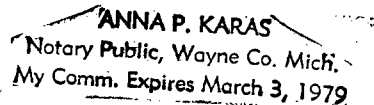
On this 23 day of May 1978, before me personally appeared B. N. SNIITZ, to me personally known, who, being by me duly sworn, says that he is a ~~Vice President~~ of NATIONAL BANK OF DETROIT, that one of the seals affixed to the foregoing instrument is the corporate seal of said corporation, that said instrument was signed and sealed this date on behalf of said corporation by authority of its Board of Directors and he acknowledged that the execution of the foregoing instrument was the free act and deed of said corporation.



Notary Public

[NOTARIAL SEAL]

My Commission expires


ANNA P. KARAS
Notary Public, Wayne Co. Mich.
My Comm. Expires March 3, 1979

SCHEDULE A

<u>Type</u>	<u>AAR Mechanical Designation</u>	<u>Quantity</u>	<u>Specifications</u>	<u>Railroad's Plant</u>	<u>Road Nos. (both inclusive)</u>	<u>Unit Base Price</u>	<u>Total Base Price</u>	<u>Estimated Time of Delivery</u>
40' 50 ton general service boxcars rebuilt to 50'	XF	100	add lading strap anchors and paint interiors white epoxy	Port Huron, Michigan	GTW 597900- 597999	\$20,000	\$2,000,000	June-July 1978